

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ROBERT WADE, )  
Petitioner, )  
                )  
v.              )         C.A. No. 04-12135-NG  
                )  
BERNARD F. BRADY, and )  
THOMAS F. REILLY, )  
Respondents.     )  
GERTNER, D.J.:

ORDER RE: ADDITIONAL BRIEFING  
March 23, 2005

The parties to this action are hereby ORDERED to submit additional briefing on the issue of whether the Court can invoke Rule 6 of the Rules Governing 28 U.S.C. § 2254 Proceedings to authorize petitioner Wade to conduct discovery in the form of DNA testing of the semen found in the vagina of the victim in the underlying criminal case. In briefing the issue, the parties should pay particular attention to the interplay between "actual innocence," as discussed in Bousley v. United States, 523 U.S. 614 (1998), and equitable tolling, as discussed in Schlup v. Delo, 513 U.S. 298 (1995), and to whether there must be a threshold factual showing of "actual innocence" before testing can be performed.

The parties are instructed to file their briefs with the Court on or before April 18, 2005.

**SO ORDERED.**

Dated: March 23, 2005

s/ NANCY GERTNER U.S.D.J.